

**TOWTRUCK
ORDINANCE NO. 2002- 007**

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, AMENDING PALM BEACH COUNTY CODE CHAPTER 19, ARTICLE VIII (ORDINANCE NO. 94-2), PROVIDING FOR THE REGULATION OF THE MAXIMUM RATES FOR NONCONSENSUAL TOWING AND STORING OF MOTOR VEHICLES; PROVIDING FOR A TITLE; PROVIDING FOR DEFINITIONS; PROVIDING FOR TOW TRUCK SPECIFICATIONS; PROVIDING FOR MANIFEST, TOWING INVOICE, OR TOW SHEET; PROVIDING FOR RECORDS REQUIRED; PROVIDING FOR RATES; PROVIDING FOR ENFORCEMENT AND PENALTIES; PROVIDING FOR SCOPE; PROVIDING FOR REPEAL OF LAWS IN CONFLICT; PROVIDING FOR INCLUSION IN THE CODE OF LAWS AND ORDINANCES; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, on March 29, 1999, the United States Supreme Court in the case of City of Atlanta v. R. Mayer of Atlanta, Inc., et al., 526 U.S. 1038 (1999), upheld a decision by the United States Court of Appeals for the Eleventh Circuit which decision struck down portions of the City of Atlanta's ordinance regulating the towing industry. The Court found that the City of Atlanta and all other local governments were preempted from regulating the towing industry because of a federal statute enacted as part of the deregulation over interstate commerce; and

WHEREAS, thereafter, Palm Beach County was served with a class action lawsuit filed by tow truck companies which had been licensed by Palm Beach County; and

WHEREAS, on April 6, 2001, Palm Beach County entered into a Class Action Settlement Agreement with Orr's Towing, Inc. and Sann's Transportation, Inc.; and

WHEREAS, pursuant to the settlement agreement, Palm Beach County agreed to repeal all provisions of its towing ordinances except for those ordinances and resolutions setting the maximum rates for nonconsensual towing and storage; and

WHEREAS, this agreement was approved by the Board of County Commissioners of Palm Beach County on April 17, 2001; and

1 **WHEREAS**, pursuant to the settlement agreement, the Board of County Commissioners of
2 Palm Beach County hereby amends Palm Beach County Code Chapter 19, Article VIII (Ordinance
3 No. 94-2).

4 **NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY**
5 **COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, that:**

6 **SECTION 1. Title**

7 This Ordinance shall be known and cited as the "Towtruck Ordinance of Palm Beach County,
8 Florida."

9 **SECTION 2. Definitions.**

10 For the purposes of this Ordinance, the following definitions shall apply:

- 11 A. **"Administrative/Lien Fee"** shall mean the fee that is charged for title and lien search,
12 advertising costs, and notification of lien holder and owner of the whereabouts and charges
13 against a vehicle or vessel.
- 14 B. **"Commission"** shall mean the Board of County Commissioners of Palm Beach County,
15 Florida.
- 16 C. **"Director"** shall mean the Division Director, or his or her designee.
- 17 D. **"Division"** shall mean the Consumer Affairs Division designated to implement, enforce and
18 monitor this Ordinance.
- 19 E. **"Extra Time at Scene"** shall mean any extra time beyond one-half hour, needed to safely
20 remove a vehicle from the scene of a "Police Directed Tow". All extra time shall be
21 documented and approved in writing by the officer on the scene. Extra time shall be
22 designated and approved in 15 minute increments.
- 23 F. **"For Compensation"** shall mean for money, property, service or anything else of value.
- 24 G. **"Nonconsent Tow"** shall include both "Police Directed Tows" and "Private Property
25 Impounds" as defined herein.
- 26 H. **"Operate"** shall mean providing the services of recovering, towing, or removing vehicles
27 and any vehicle storage services associated therewith.
- 28 I. **"Operator"** shall mean any person who provides the services of recovering, towing, or

1 removing vehicles and any vehicle storage services associated therewith and includes without
2 distinction the owning entity of a towing firm and the driver of a tow truck.

3 J. **"Person"** shall mean any natural person, firm, partnership, association, corporation or other
4 entity of any kind whatsoever.

5 K. **"Place of business"** shall apply to the towtruck company that provides non-consent towing,
6 removal or recovery services.

7 L. **"Police Directed Tow"** shall mean the removal and storage of wrecked or disabled vehicles
8 at the direction of police/law enforcement from an accident scene or the removal and storage
9 of vehicles in the event the owner or operator is incapacitated, unavailable, or otherwise
10 does not consent to the removal of the vehicle, excepting, however, all incidents of *Private*
11 *Property Impounds* as herein defined below.

12 M. **"Private Property Impound"** shall mean towing or removal of a vehicle, without the
13 consent of the vehicle's owner or operator, as such is authorized by Section 715.07, Florida
14 Statutes, as may be amended, when that vehicle is parked on private real property.

15 N. **"Property Owner"** shall mean that person who exercises dominion and control over real
16 property, including but not limited to, the legal titleholder, lessee, designated representative
17 of a condominium or homeowner's association or any person authorized to exercise or share
18 dominion and control over real property; provided, however, that "property owner" shall not
19 mean or include a person providing towing services within the purview of this Ordinance.

20 O. **"Recover"** shall mean to take possession of a vehicle and its contents and to exercise
21 control, supervision and responsibility over it.

22 P. **"Recovery"** shall mean the removal of a vehicle from a canal or other body of water, a
23 wooded area not readily accessible to a roadway (i.e., within a standard cable length) or when
24 a vehicle is buried.

25 Q. **"Regulation"** shall mean a rule set forth in this Ordinance, the violation of which is
26 sufficient grounds for fines, civil damages, court costs, attorneys fees, and specified criminal
27 penalties.

28 R. **"Remove"** shall mean to change the location of a vehicle by towing it.

29 S. **"Storage"** shall mean to place and leave a towed vehicle at a location where the person
30 providing the towing services exercises control, supervision and responsibility over the
31 vehicle.

- 1 T. **"Tow"** shall mean to haul, draw or pull along a vehicle by means of another vehicle
2 equipped with booms, car carriers, winches or similar equipment.
- 3 U. **"Towing"** shall mean the act of moving one vehicle from one point to another (including
4 hook-up, lift, and transport) using a vehicle commonly referred to as a tow truck or a car
5 carrier.
- 6 V. **"Towtruck"** shall mean any motor vehicle used to tow, haul, carry or to attempt to tow, haul
7 or carry another motor vehicle.
- 8 W. **"Towtruck Company"** shall mean any person, company, corporation, or other entity, who
9 engages in or owns or operates a business which engages, in whole or in part, in the towing
10 or removal of vehicles for compensation.
- 11 X. **"Vehicle"** shall mean an automobile, boat, truck, bus, trailer, motorcycle, moped, motorized
12 scooters, recreational unit primarily designed as temporary living quarters which either has
13 its own motive power or is mounted on or drawn by another vehicle, or any other mobile
14 item using wheels and being operated on the roads of Palm Beach County, which is used to
15 transport persons or property and is propelled by power other than muscular power; provided,
16 however, that the term does not include bicycles, traction engines, road rollers, semitrailers,
17 truck tractors, semitrailer combinations, commercial heavy equipment or vehicles which run
18 only upon a track.

19 **SECTION 3. TOWTRUCK CLASS SPECIFICATIONS.**

20 **A. Class A Minimum Ratings**

21 **Towtruck**

- 22 1. Gross vehicle weight ratings 15,000 Lbs.
23 2. Boom capacity 8,000 Lbs.
24 3. Winching capacity 8,000 Lbs
25 4. Cable size and length 3/8"X100'
26 5. Wheel lift retracted rating 5,000 Lbs.
27 6. Wheel lift extended rating 5,000 Lbs.
28 7. Tow sling safe lift 5,000 Lbs.
29 8. Safety chains (2 each) 5/16" grade 70
30 9. Cab to axle dimension 84"

31 **Single Car Carrier**

- 32 1. Gross vehicle weight ratings 15,000 Lbs.
33 2. Deck capacity 10,000 Lbs.
34 3. Maximum length 19"
35 4. Winching capacity 8,000 Lbs.
36 5. Cable size and length 3/8"X50'
37 6. Tie down chains or straps (4 each) 5/16" grade 70
38 7. Cab to axle dimension 120"

B. Class B Minimum Ratings

Towtruck

1. Gross vehicle weight ratings 21,500 Lbs.
2. Boom capacity 24,000 Lbs.
3. Winching capacity (dual 12,000 lbs) 24,000 Lbs.
4. Cable size and length 7/16"X150'
5. Wheel lift retracted rating 10,500 Lbs.
6. Wheel lift extended rating 8,500 Lbs.
7. Tow sling safe lift 8,500 Lbs.
8. Safety chains (2 each) 3/8" grade 70
9. Cab to axle dimension 108"

Two Car Carrier

1. Gross vehicle weight ratings 25,500 Lbs.
2. Deck capacity 10,000 Lbs
3. Wheel lift capacity for 2nd vehicle 4,000 Lbs
4. Minimum length 19'
5. Winching capacity 8,000 Lbs.
6. Cable size and length 3/8"X50'
7. Tie down chains or straps (4 each) 5/16" grade 70
8. Cab to axle dimension 120"

C. Class C Towtruck - Minimum Ratings

1. Gross vehicle weight ratings 33,000 Lbs.
Air brakes, all tires H rated, capacity must
equal axle rating. Device required to control
disabled vehicle's brakes.
2. Boom capacity 50,000 Lbs.
3. Winching capacity 50,000 Lbs.
4. Cable size and length 5/8"X150'
5. Wheel lift retracted rating 25,000 Lbs.
6. Wheel lift extended rating 12,000 Lbs.
7. Tow Bar. 12,000 Lbs.
8. Safety chains (2 each) 1/2" grade 70
9. Cab to axle dimension 140"

D. Class D. Towtruck - Minimum Ratings

1. Gross Vehicle Weight Ratings 58,000 Lbs.
Air brakes, all tires H rated, capacity must
equal axle rating. Device required to control
disabled vehicle's brakes.
2. Boom capacity. 80,000 Lbs.
3. Winching capacity. 80,000 Lbs.
4. Cable size and length 3/4"X250'
5. Wheel Lift retracted rating 45,000 Lbs.
6. Wheel lift extended rating 15,000 Lbs.
7. Heavy duty towbar rating 15,000 Lbs.
8. Safety chains (2 each) 5/8" grade 70
9. Cab to axle dimension 180"

SECTION 4. Manifest, Towing Invoice, or Tow Sheet.

- A. It shall be unlawful for any person for compensation to recover, tow or remove a vehicle or provide storage in connection therewith unless the person providing such service shall maintain in his possession a manifest, towing invoice, or tow sheet or dispatch records which shall include, but not be limited to, the following information:

- 1) Name of the towtruck company and of the operator physically providing the service;
- 2) Date and time that the service was requested;
- 3) Name, address and telephone number of the person requesting the service;
- 4) Date and time that the service was initiated;
- 5) Location and time of arrival at the location at which the service originated;
- 6) Destination to which the vehicle being provided the service is taken and the time of arrival at the destination;
- 7) Description of vehicle being provided the service, including make, model, year, color, vehicle identification number and license plate number, if any;
- 8) Description of services provided; and
- 9) The total charges listed individually and specifically as well as the description of the services rendered;
- 10) Any and all charges, including the name, badge number, and agency of the officer on the scene who approved these additional charges, including a detailed explanation of the services rendered which necessitated the charges.
- 11) The following disclosure in bold capitalized letters of at least 12-point type:

**IF YOU HAVE QUESTIONS OR COMPLAINTS
ABOUT A NON-CONSENT TOWING RATE
UNABLE TO BE RESOLVED BY THE TOWING
COMPANY MANAGEMENT, CONTACT THE
PALM BEACH COUNTY CONSUMER AFFAIRS
DIVISION, WEST PALM BEACH, FLORIDA.
TELEPHONE: (561) 712-6600 OR BY E-MAIL:
Consumer@co.palm-beach.fl.us.**

B. Each manifest, towing invoice, or tow sheet shall be available for inspection upon demand by police officers, or by personnel authorized by the Division to perform enforcement duties, at any time during the period of recovery, towing or removal of a vehicle.

SECTION 5. Records Required.

Each towtruck company under this Ordinance shall maintain accurate and complete records relating to the rates for non-consent tows, including but not limited to, manifests, towing invoices, or tow sheets for services rendered, and records of payments for services rendered. Such records shall be maintained for at least three (3) years. The Division shall be granted access

1 to these records for inspection and/or the removal of such records for the purpose of copying,
2 during regular business hours, upon five (5) days prior notice. All records and information
3 inspected and not copied shall be confidential, except that records may be copied and made
4 public for the purpose of license suspension or revocation proceedings.

5 **SECTION 6. Maximum Towing and Storage Rates for Non-Consent Tow Services.**

6 A. The Commission shall, by Resolution No. R-2002-_____, establish the following
7 maximum rates, as may be amended from time to time, for nonconsent towing services:

- 8 1. Towing service per call, which shall include the first 30 minutes that the towing
9 vehicle is actually on the scene engaged in the safe removal of a vehicle.
- 10 2. Mileage (per towed mile) according to Section 715.07, Florida Statutes.
- 11 3. Storage shall only be charged after the vehicle has been in the storage facility for
12 at least 24 hours and:

- 13 a. The police agency has authorized the vehicle to be impounded, or
- 14 b. The appropriate police agency has been notified by the operator that the
15 towtruck company is in possession of a vehicle as a result of a private
16 property impound.

17 Failure of the vehicle owner or authorized agent to recover the vehicle within 24
18 hours shall result in the assessment of full storage charges beginning from the
19 time the vehicle reached the storage facility. Indoor storage rates may only be
20 charged upon the direction and authorization of the owner, lien holder, insurance
21 company representative or investigating police agency.

- 22 4. An Administrative/Lien Fee shall only be charged after the vehicle has been in the
23 storage facility for at least 24 hours and:
 - 24 a. The police agency has authorized the vehicle to be impounded, or
 - 25 b. The police agency has been notified by the operator that the towtruck
26 company is in possession of a vehicle as a result of a private property
27 impound.

28 The operator must show proof that lien letter(s) have been prepared with the
29 appropriate names/addresses (i.e., U.S. Mail Certification Number,
30 correspondence copies, etc.).

5. Extra time at scene with the written documentation and approval of the investigating law enforcement agency/officer.
 6. Underwater recovery performed by a certified/professional diver with the written documentation and approval of the investigating law enforcement agency/officer.
 7. Hazardous material clean-up and disposal as required, mandated and/or licensed through state or local laws and approved by the investigating law enforcement agency/officer.
 8. After-hour gate fee may be applied when impounded vehicles are recovered by the owner or authorized agent between the hours of 10 p.m. and 6 a.m.
 9. After-hour personal property recovery fee may be applied when the owner or authorized agent wish to recover property from an impounded vehicle between the hours of 10 p.m. and 6 a.m. This fee shall not be charged if the owner or authorized agent is recovering his/her vehicle and an after-hour gate fee is being charged.
- B. The rates established shall be uniform throughout Palm Beach County both in the incorporated and unincorporated areas, except where municipalities have established differing maximum rates for their jurisdictions. From time to time, the rates established by the Commission may be revised in accordance with a rate study.
- C. Persons who provide services pursuant to this section shall not charge in excess of the maximum allowable rates established by the Commission. No person providing services pursuant to this section shall charge any type of fee other than the fees for which the Commission has established specific rates.
- D. Towtruck companies which provide services pursuant to this section shall not charge any fee if the vehicle owner or other person legally authorized to control the vehicle arrives at the scene prior to towing or removal, except where:
- 1) The registered owner or other legally authorized person in control of the vehicle refuses or is unable to remove the vehicle; or
 - 2) A complete mechanical connection exists between the vehicle and the towing or removal apparatus and the registered owner or other person in control of the vehicle refuses to pay a reasonable service fee of not more than one-half (1/2) of the posted rate for such towing services as required by this Ordinance.

1 E. Towtruck companies which provide services pursuant to this section shall advise any
2 vehicle owner or authorized representative who calls by telephone prior to arriving at the
3 storage site, of the following:

- 4 1) Each and every document which must be produced to retrieve the vehicle;
- 5 2) The exact charges as of the times of the telephone call, and the rate at which
6 charges accumulate after the call;
- 7 3) The acceptable methods of payment;

8 F. Towtruck companies which provide services pursuant to this section shall display on the
9 same sign as the rate schedule required by this Ordinance the following statement:

10 **To The Vehicle Owner**

11 If you believe that you have been overcharged for the services rendered, you do
12 not have to pay your bill to get your vehicle. Instead, you have the right to post a
13 bond in the Circuit Court, payable to (name of towtruck company), in the amount
14 of the final bill for services rendered, and to file a complaint within ten (10) days
15 of the time you have knowledge of the location of the vehicle. The Court will
16 decide later who is correct. If you show (name of towtruck company) a valid
17 Clerk's certificate showing you have posted a bond, (name of towtruck company)
18 must release your vehicle to you immediately. This remedy is in addition to other
19 legal remedies you may have. Section 713.76 and Section 713.78, Florida
20 Statutes.

21 If you have a complaint about the way services were provided, you may call the
22 Palm Beach County Division of Consumer Affairs, (561) 712-6600.

23 G. Each towtruck company shall maintain, on a form approved by the Division, a rate sheet
24 specifying all rates and charges, which shall be given by the towtruck driver to the
25 requesting vehicle owner or his authorized representative prior to commencing the
26 service.

27 **SECTION 7. Enforcement and Penalties: Civil and Criminal**

28 A. This Ordinance shall be enforced by personnel authorized by the Division, county code
29 enforcement officials, the police agencies of the various municipalities in Palm Beach
30 County and by the Palm Beach County Sheriff's Office. When specifically authorized by
31 the Director, this Ordinance may be enforced by other Palm Beach County personnel.

32 B. The County Court shall have jurisdiction over all violations of this Ordinance.

33 C. The Division shall maintain a system by which violators are given written notice of all
34 violations. The County Clerk shall accept designated fines and issue receipts therefor.

- 1 D. The Division is authorized to enforce the provisions of this Ordinance by administrative
2 fines not to exceed five hundred dollars (\$500.00) for each violation. Any person who
3 has violated any provision of this Ordinance shall be fined an amount as established by
4 the Board of County Commissioners by Resolution. Each day of a continuing violation
5 shall be deemed a separate violation.
- 6 E. Payment shall be made, either by mail or in person, to the Violations Bureau within the
7 time specified upon the citation. If such person follows this procedure, he shall be
8 deemed to have admitted to the infraction and to have waived his right to a hearing on the
9 issue of the commission of the infraction.
- 10 F. All fines collected as a result of said citations (except those fines collected as a result of
11 citations issued by municipal law enforcement officers, which shall be remitted by the
12 Clerk of the Court directly to the municipality issuing the citation) shall be paid into the
13 County Treasury and deposited into the designated fund for the Division. Pursuant to
14 Florida Statutes 938.01, 938.17 and 938.19, mandatory costs shall be assessed against
15 every person convicted of a violation of this Ordinance.
- 16 G. Any person who fails to make payments within the time period specified on the citation
17 shall be deemed to have waived his right to pay the civil penalty as set forth in the citation
18 and shall appear before the County Court.
- 19 H. Any person who elects to appear before the court to contest the citation shall be deemed
20 to waive his right to pay the civil penalty. The court, after a hearing, shall make a
21 finding as to whether a violation has occurred and may impose a civil penalty not to
22 exceed \$500.00 plus court costs.
- 23 I. If a person fails to pay the civil penalty or fails to appear in court to contest the citation,
24 he shall be deemed to have waived his right to contest the citation and, in such case, a
25 default judgment shall be entered and the judge shall impose a fine at that time. If the
26 fine is paid, the case shall be dismissed. If the fine is not paid, judgment may be entered
27 up to the maximum civil penalty of \$500.00 plus court costs.
- 28 J. Any person who refuses to sign and accept a citation issued pursuant to this Ordinance
29 shall be guilty of a misdemeanor of the second degree, punishable as provided by sections
30 775.082, 775.083 or 775.084, Florida Statutes.
- 31 K. The Division may require mandatory court appearances for violations resulting in the

1 issuance of a third or subsequent citation to a person. The citation shall clearly inform the
2 person of the mandatory court appearance. The Division shall maintain records to prove
3 the number of citations issued to the person. Persons required to appear in court do not
4 have the option of paying the fine instead of appearing in court.

5 L. Failure to comply with the requirements of this Ordinance shall also constitute a
6 violation of a County Ordinance, including the Consumer Affairs Ordinance of Palm
7 Beach County (No. 77-10, as amended), and shall be punishable, upon conviction,
8 pursuant to Section 125.69(1), Florida Statutes, by a fine not to exceed \$500.00 per
9 violation or imprisonment not exceeding sixty (60) days, or both such fine or
10 imprisonment. Each day of continuing violation shall be considered a separate offense.
11 In addition to the sanctions contained herein, the County shall take any other appropriate
12 legal action, including but not limited to, cease and desist orders, other administrative
13 action and requests for temporary and permanent injunctions to enforce the provisions of
14 this Ordinance. It is the purpose of this Ordinance to provide additional cumulative
15 remedies.

16 **SECTION 8. Scope of Ordinance**

- 17 A. The provisions of this Ordinance and the relevant Florida Statutes, shall be the exclusive
18 regulations applicable to the recovery, towing and removal of vehicles in Palm Beach
19 County and all storage provided therewith, in both the unincorporated and incorporated
20 areas; except that this Ordinance shall not apply in any municipality or jurisdiction that
21 has adopted and maintains in effect Ordinances or regulations governing the same
22 matters.
- 23 B. Nothing in this Ordinance shall prevent law enforcement agencies from providing
24 additional or more restrictive requirements in contracts or arrangements under which law
25 enforcement officers direct and authorize the recovery, towing or removal of vehicles or
26 storage provided in connection therewith.
- 27 C. This Ordinance shall not apply to the towing of a vehicle which occurs:
- 28 1. At the direction of a law enforcement officer pursuant to a written agreement with
29 a towing company;
- 30 2. With the County pursuant to a written agreement with a towing company;

3. With any municipality pursuant to a written agreement with a towing company; or
4. With the consent of the vehicle 's owner or operator.

SECTION 9. Repeal of Laws in Conflict.

All local laws and ordinances applying to the unincorporated area of Palm Beach County in conflict with any provisions of this Ordinance are hereby repealed.

SECTION 10. Inclusion in the Code of Laws & Ordinances.

The provisions of this Ordinance shall become and be made a part of the Code of Laws and Ordinances of Palm Beach County, Florida. The sections of this Ordinance may be renumbered or relettered to accomplish such, and the words "ordinance," "article," "section," "subsection," or "paragraph" may be changed to any other appropriate word to accomplish codification.

SECTION 11. Severability.

If any section, paragraph, sentence, clause, phrase, or word of this Ordinance is for any reason held by a court of competent jurisdiction to be unconstitutional, inoperative or void, such holding shall not affect the remainder of this Ordinance.

SECTION 12. Effective Date.

The provisions of this Ordinance shall be effective immediately upon filing with the Department of State.

1 APPROVED and ADOPTED by the Board of County Commissioners of Palm Beach County,
2 Florida, on the 12 day of March, 2002.
3

4 PALM BEACH COUNTY, FLORIDA,
5 Dorothy H. Wilken, Clerk BY ITS BOARD OF COUNTY COMMISSIONERS

6 By: Linda C. Hickman Deputy Clerk
7
8 By: W. Newell Warren H. Newell, Chairman

9 APPROVED AS TO FORM AND
10 LEGAL SUFFICIENCY

11 By: [Signature]
12 County Attorney

13 Filed with the Florida Department of State on the 22 day of March, 2002, at
14 _____m.

15 T:\TOWING\OrdClean2001Towing2.wpd

STATE OF FLORIDA, COUNTY OF PALM BEACH
I, DOROTHY H. WILKEN, ex-officio Clerk of the
Board of County Commissioners certify this to be a
true and correct copy of the original filed in my office
on March 12, 2002.
DATED at West Palm Beach, FL on 4/3/02.
DOROTHY H. WILKEN, Clerk
By: Liane Bruer D.C.